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May 5, 2022

VIA ECF

The Honorable Sarah L. Cave
United States Magistrate Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street, Room 1670
New York, NY 10007

Re: Butler v. The All American Bar on First Avenue Inc. et al,
21-cv-00164-VSB-SLC

Dear Magistrate Judge Cave:

Louise DeMarco, one of the named defendants, in connection with the above-captioned action, retained our office a few days ago. As the Court may recall, plaintiffs recently filed a Second Amended Complaint (March 21, 2022) and an answer was filed by defendant DeMarco on April 11, 2022 by co-defendants' counsel, Michael Leon. I notice of substitution was filed today with the Court via ECF (Docket No.: 81). I communicated to plaintiff's attorney, David Harrison, that I intend to file an Amended Answer to Plaintiff's Second Amended Complaint and requested to depose the Plaintiffs for the limited purpose of probing the allegations they make against my client individually.

Mr. Harrison declined my request despite the fact plaintiffs sought leave to amend their Second Amended Complaint just weeks ago. I respectfully submit to the Court that my client needs to file an amended answer because she will assert affirmative defenses that are neither pleaded in the currently filed answer nor available to the other co-defendants. Namely, my client vigorously asserts that she is not subject to any personal liability because she is not an "*employer*" under the FLSA and the Second Circuit case law.

Consequently, I write this letter to request a conference with the Court and, if necessary, to file a motion to compel plaintiffs' depositions. My client was added as a defendant less than 46 days ago and I believe that Ms. DeMarco's request is eminently reasonable.

I thank the Court for its attention to this time sensitive matter.

Respectfully,

Costantino Fragale

cc: Michael Leon, Esq. (Via ECF); and
David Harrison, Esq. (Via ECF)

Defendant Louise DeMarco's request for a conference to discuss her requests for leave to file an amended answer and to compel the re-opening of Plaintiffs' depositions (ECF No. 82) is DENIED WITHOUT PREJUDICE to renewal, if necessary, following the settlement conference scheduled for May 24, 2022 (see ECF No. 80).

The Clerk of Court is respectfully directed to close ECF No. 82.

SO ORDERED 5/11/2022



SARAH L. CAVE
United States Magistrate Judge